

August 19, 2020

Moore&VanAllen

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
The Public Service Commission of South Carolina
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Re: **Docket No. 2005-83-A** – Comments Regarding Procedural
Schedules in Annual Fuel Proceedings

Dear Ms. Boyd:

On behalf of Nucor Steel South Carolina, a Division of Nucor Corporation (“Nucor”), we appreciate the invitation and opportunity to provide comments on procedural schedule issues in fuel cases. We also request the opportunity to participate in the virtual forum on August 25, 2020. Finally, we are also interested in the comments and recommendations of other stakeholders and would appreciate the opportunity to respond, if necessary, after the virtual forum.

Nucor is a large industrial customer of Duke Energy Progress (“DEP”). Nucor uses massive amounts of electric energy in its steel-making processes at a cost of millions of dollars a year. A significant portion of Nucor’s overall electric cost is attributable to fuel costs and, as a result, Nucor actively participates in DEP’s fuel cases and has done so for many years. Since we participate in DEP’s fuel cases, but not those of any other South Carolina utilities, our comments are focused on DEP’s fuel case process.

S.C. Code Ann. Section 58-27-865 contemplates an annual review and rate setting process for fuel costs, but detailed procedural requirements for fuel cases are not prescribed in statute or in the Commission’s regulations. Given the need to conduct fuel proceedings on an annual basis, the amount of time for a proceeding to be conducted is necessarily limited. The schedule is further compressed due to the July 1 implementation date for DEP’s new fuel rates each year and the need to use as much actual, historical data in setting fuel rates as possible (fuel rates are currently set based on twelve months of actual data and sixteen months of estimated or forecasted data). As a result, the procedural schedule in DEP’s fuel cases typically requires that DEP file its direct testimony in the late April time frame, which allows DEP to use actual data up through February of the year in which the case is filed. This leaves about ten weeks between when DEP files its direct testimony and when the new fuel rates go into effect on July 1 for the fuel case to be conducted.

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Within this ten week window, the DEP fuel case procedural schedule typically calls for ORS/intervenor direct testimony to be filed three weeks after DEP's direct testimony is filed, DEP rebuttal testimony to be filed one week after ORS/parties direct testimony, and surrebuttal testimony to be filed one week after rebuttal testimony. The hearing follows a week after the surrebuttal date, and proposed orders and briefs are due about a week after the hearing to allow the Commission time to issue its decision prior to the July 1 effective date.

We note that any significant change to the standard procedural schedule in DEP's fuel cases going forward would likely involve trade-offs between allowing more time under the schedule and the amount of actual historical data that can be used to set DEP's fuel rates. For example, if DEP were required to file its testimony a month earlier to allow for more time for parties to review, ask discovery, and file testimony, it would probably mean DEP having to use an additional month of estimated data. Similarly, retaining the current due date for DEP's direct testimony but extending the effective date of DEP's new fuel rates an extra month would entail adding an additional month of estimated data on the back end.

As an intervenor, the tight procedural schedule in fuel cases can certainly present challenges. As a result, generally speaking, we would always prefer more time than currently provided for in DEP's fuel case procedural schedule to, for example, prepare testimony, prepare for the hearing and submit briefs or proposed orders after a hearing. We suspect that other parties and the Commission would welcome more time as well.

Nevertheless, given the necessarily limited amount of time available to conduct fuel cases, in general we think the procedural schedule used in DEP's fuel cases has worked reasonably well in recent years. However, this is a function of and dependent on reasonable actions by and cooperation among the parties. As a result, at this time, rather than making major changes to the standard procedural schedule currently used, a reasonable option would be for the Commission to keep the same basic procedural schedule for now, but expressly reserve the flexibility and willingness to adjust the schedule in each case and/or for each utility as necessary based on developments in the case and the specific needs of the parties.

For example, with regard to discovery, parties currently are able to conduct discovery well before DEP files its direct testimony, so there is already an opportunity to ask questions and get some information and data before the filing of testimony. This information will be limited however, since some data will not exist or be available prior to the preparation and filing of DEP's testimony. Moreover, having only three weeks between the filing of DEP's direct testimony and ORS/intervenor testimony can make it difficult for an intervenor to submit discovery on DEP's testimony and get the answers back in time for use in that party's own direct testimony (much less any time to ask follow-up questions). One week to prepare rebuttal and surrebuttal is even more problematic. To address this issue, upon request of a

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party and based on the circumstances of the case, the Commission could consider reducing the response time for discovery, and/or extending the due date for parties' testimony.

On a case-by-case basis, the Commission could also consider requests to modify other aspects of the procedural schedule, including the testimony and hearing dates. The Commission has demonstrated a willingness to adjust the fuel case procedural schedule in past cases, for example, to accommodate settlement discussions among the parties. The Commission's flexibility in regard to the procedural schedule has been very helpful in the past and will continue to be important going forward.

Given the nature and frequency of fuel cases, the ability of parties to fully explore and litigate complicated issues is necessarily limited, and this will likely be the case regardless of any changes to the standard fuel case procedural schedule that may be adopted. As a result, the Commission should also consider explicitly stating its willingness to consider carving such issues out of the standard fuel case to be addressed in a separate docket or deferred for consideration until after the initial fuel case order in order to provide more time to explore the issue. This approach would allow the annual fuel proceeding to stay on track while ensuring that there is a process in place to preserve and address issues that require a more detailed examination.

Based on the above, at this point, we would be inclined to suggest that the Commission keep the same basic procedural schedule currently used in DEP's fuel cases, but retain the flexibility and willingness to adjust the schedule as necessary based on developments in the case, as well as reserve the option to defer issues and/or move them to another track/proceeding for separate consideration. If allowing additional time in the standard procedural schedule is deemed feasible and appropriate, additional time between direct, rebuttal and surrebuttal testimonies, for filing briefs and for Commission consideration seem most important. That said, we are open to other views and recommendations and are looking forward to hearing the comments of other stakeholders on these issues.

Thank you for the opportunity to comment on this matter. Mike Lavanga (mkl@smxblaw.com) and I plan to participate in the virtual forum on August 25, 2020. Please contact us if you have any questions.

Sincerely,



Robert R. Smith II
Counsel for Nucor Steel – South Carolina

cc: All Parties of Record (via First Class Mail/E-mail)